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IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1984

No. 84-1698

RANSOM THEODORE SPURLOCK, et al.,
Petitioners,

v.

SANTA FE PACIFIC RAILROAD COMPANY and
KERR-McGEE CORPORATION,
Respondents.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF ARIZONA

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May 28, 1985

BEST AVAILABLE COPY

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SUMMARY OF ARGUMENT

The Petition for a Writ of Certiorari presents no issue warranting review by this Court. First, the Spurlocks' claim that title to the land grant lands was in an affiliate of Santa Fe Pacific, rather than Santa Fe Pacific, is irrelevant to their claim to the reserved minerals. Further, the Spurlocks lack standing to make this claim, and their claim has no merit. Second, the Spurlocks' argument that federal law, not state law, controls the interpretation of the mineral reservation was not presented to the state courts and cannot be reviewed by this Court. In any event, the issue is one of state law which this Court need not review. Third, the Spurlocks' claim that their due process rights were violated was not timely raised in the Arizona courts and has no legal basis.

INTRODUCTION

In their effort to cast this litigation in a form that will engage the attention of this Court, Petitioners have characterized a private dispute over title to minerals as a cause of grave public significance. The contrary is true.

As litigated in the state courts, this case consisted of a series of claims and counterclaims seeking to quiet title under Arizona law to certain minerals located upon or under land owned by the Spurlocks subject to a mineral reservation in favor of Santa Fe Pacific. The Spurlocks also asserted state law claims seeking to recover damages for the removal of helium-bearing gas from lands subject to the mineral reservation. The case involves claims based on Arizona property and tort law.

In the Petition, the Spurlocks

argue that Santa Fe Pacific's mineral reservation is void under federal law. This claim is peripheral to the real dispute litigated below. Indeed, the Spurlocks have characterized their claims in the consolidated cases as follows:

> Simply stated, the Spurlock v. Santa Fe lawsuit involves the ownership of the helium which lies beneath the plaintiffs' land and whether or not the defendants should respond in damages to the plaintiffs for their past and continuing wrongs. The fact that defendant Santa Fe Pacific Railroad Company is federally chartered and, along with other defendants, has violated its federal charter in many regards, is only collateral and incidental to the main controversy.

Spurlocks' Motion for Remand and Response in Opposition to Petition for Removal, Appendix A at 9 (emphasis added).

The Spurlocks are dissatisfied with the decision reached by the Arizona Court of Appeals. However, the Supreme

Court of the United States is not merely a haven for dissatisfied litigants. Rather, as stated by Chief Justice Taft, "[t]he Supreme Court's function is for the purpose of expounding and stabilizing principles of law for the benefit of the people of the country, passing upon constitutional questions and other important questions of law for the public benefit." Hearings Before the House Committee on the Judiciary, 67th Cong., 2d Sess. § 33 at 2 (1922). The case below raises no significant constitutional issues and no federal law questions of any public importance.

Reasons for Denying the Petition.

In the Petition, the Spurlocks advance three reasons why this Court should grant a writ of certiorari and review this case. First, they argue that at the time of the conveyances from Santa

Fe Pacific to the Spurlocks' predecessors in interest, the title to the lands involved in this lawsuit was in Santa Fe Pacific's parent company, the Atchison, Topeka and Santa Fe Railway Company ("AT&SF"), and not Santa Fe Pacific. They do not suggest any reason why such a conclusion would entitle them to relief from this Court. Second, they argue that the holding of the Arizona Court of Appeals, that under Arizona law a reservation of "all oil, gas, coal and minerals whatsoever" is unambiguous and reserves the entire mineral estate, must be overturned as contrary to the decisions of this Court. Third, they argue that the failure of one Arizona Court of Appeals judge to recuse himself violated the Spurlocks' rights under the due process clause.

None of the arguments raised by the Spurlocks presents any issue that

justifies review by this Court. The arguments are without merit and, in some instances, untimely. For these reasons, the Petition should be denied.

1. The Spurlocks' claim that title to the land grant lands was in AT&SF rather than Santa Fe Pacific does not warrant review by this Court.

Based upon a tortuous analysis of 1866, 1871, 1897 and 1902 Acts of Congress, the Spurlocks argue that after 1903 the land grant lands, including the lands involved in this lawsuit, were owned by AT&SF rather than Santa Fe Pacific. The point of the argument is unclear. Even if AT&SF rather than Santa Fe Pacific owned the land grant lands in 1903, the Spurlocks would not own the minerals in dispute. Rather, either AT&SF would own the land and underlying minerals, having conveyed to no one, or the conveyances by Santa Fe Pacific to the Spurlocks'

predecessors subject to a mineral reservation would be in effect conveyances by AT&SF.[1] In either case, the judgment

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[1] If AT&SF rather than Santa Fe Pacific was the owner of the lands after 1903, the Spurlocks are not entitled to judgment because they have not joined AT&SF as a party to this litigation. See McShan v. Sherrill, 283 F.2d 462, 463-64 (9th Cir. 1960).

Further, the Spurlocks cannot claim full fee title against AT&SF by adverse possession because their predecessors entered into possession of the lawsuit lands pursuant to the deeds containing mineral reservations. The Spurlocks entered the lands under the same chain of title. An occupant cannot acquire title by adverse possession greater than that which he intended to claim when entering the property. Holmes v. Johnson, 324 Mass. 450, 86 N.E.2d 924, 926 (1949). Thus, when a party enters property under a deed, the deed limits the scope of his possession and he cannot acquire any greater title than the deed purports to convey. See Gibbs v. Pace, 207 Ark. 199, 179 S.W.2d 690, 692 (1944); Porter v. Wilson, 389 S.W.2d 650, 657-58 (Tex. 1965). This is true even when the occupant enters under a void or invalid deed. See Dick v. Darden, 204 Ala. 400, 85 So. 369 (1920). Therefore, because the Spurlocks and their predecessors entered under a deed that contained a mineral reservation, the title they could acquire

(footnote continued)

entered by the Arizona Court of Appeals would be correct.

Recognizing the necessity of presenting an issue of public importance, Petitioners argue that the decision of the Arizona Court of Appeals will affect title to some 4,000,000 acres of land in Arizona and New Mexico, a part of which is within the boundaries of Grand Canyon National Park and Lake Mead National Recreation Area. Petition at 10 n.14. The argument does not withstand the most superficial scrutiny.

If, as Petitioners insist, title to these lands passed to AT&SF in 1903, the occupants, both public and private, may be mere squatters whose rights can only be confirmed by a multitude of

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(footnote continued from previous page)
by adverse possession would be subject to that mineral reservation.

individual quiet-title actions. No overriding national purpose could be served by such a result. It is less than clear how the Interior Department's effort to eliminate pockets of private ownership in the national parks will be facilitated by an adjudication that AT&SF, rather than Santa Fe Pacific, is the owner.

The Spurlocks are, in effect, seeking an advisory opinion from this Court as to whether title to the land grant lands from 1903 onward rested in Santa Fe Pacific or AT&SF. Since the answer to that question is irrelevant to any dispute between the Spurlocks and Santa Fe Pacific or Kerr-McGee, there is no basis for this Court to decide the issue.

Further, the Spurlocks lack standing to argue that AT&SF rather than Santa Fe Pacific owns the land grant lands or

that the Santa Fe Pacific mineral reservation is void. Only the United States or the parties to the 1902 and 1903 transactions would have standing to enforce an obligation of Santa Fe Pacific to convey to AT&SF or to challenge the retention of the land grant lands by Santa Fe Pacific. See Kerfoot v. Farmers & Merchants Bank, 218 U.S. 281 (1910); Illinois Commerce Comm'n v. Central Illinois Public Service Co., 25 Ill. App. 3d 79, 322 N.E.2d 520 (1975); Hazelwood Brewing Co. v. Siebert, 256 Pa. 9, 100 A. 493 (1917). Similarly, the Spurlocks are not entitled to attack the Santa Fe Pacific mineral reservation as contrary to the 1866, 1871, 1897 or 1902 Acts of Congress. The United States Court of Appeals rejected a similar argument in Russell v. Texas Co., 238 F.2d 636 (9th Cir. 1957), observing:

> Even assuming arguendo that appellant's theory is sound

> and that Congress did in 1870 impose a mandatory duty on the Northern Pacific to convey a full fee title to the land here involved, with no reservations, appellant has indicated no authority by which he is enabled to enforce that mandate. Nor has he attempted, if indeed it were possible, to classify himself as a third party beneficiary or a cestui que trust with respect to this land. To overlook such a distinction is to vault the appellant into a status which he has not acquired. In such legal gymnastics we will not indulge.

238 F.2d at 640.

The Spurlocks' claim that title to the lands involved in this lawsuit was in AT&SF is also a collateral attack on the patents issued by the United States to Santa Fe Pacific. A determination of the Secretary of the Interior that a patent should be granted to an applicant cannot be attacked by a third party in a collateral proceeding. Burke v. Southern Pacific R.R. Co., 234 U.S. 669 (1913); see

also Field v. Seabury, 60 U.S. 323 (19 How.) (1856); Boise Cascade Corp. v. Union Pacific R.R. Co., 630 F.2d 720 (10th Cir. 1980), cert. denied, 450 U.S. 995 (1981).

The Spurlocks' reading of the 1866, 1871, 1897 and 1902 Acts of Congress is also erroneous. Santa Fe Pacific was chartered as the successor to the Atlantic and Pacific Railroad Company ("A&P"). It succeeded to a railroad and right of way belonging to that company and certain land grant lands, already patented and not yet patented, granted by Congress. It conveyed the railroad and right of way to AT&SF and retained the land grant lands.[2]

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[2] Contrary to the Spurlocks' assertions that this transaction was a secret, fraudulent scheme, the transaction was well known at the time. In New Mexico v. Baker, 196 U.S. 432 (1905), the United States Supreme Court recognized that Santa Fe Pacific had conveyed away the railroad pursuant to the 1902 Act of Congress and retained the land grant lands.

Santa Fe Pacific ultimately sold those land grant lands, retaining a severed mineral estate in some of the lands sold. None of this was inconsistent with the four Acts of Congress or with the general intent of Congress in chartering land grant railroads.

Between 1861 and 1871, Congress enacted a series of statutes chartering companies to build railroads to the Pacific coast. The overriding purpose behind those Acts (including the Act of July 26, 1866 chartering A&P) was to establish railroad links with the West. See Platt v. Union Pacific R.R. Co., 99 U.S. 48, 59-60 (1878); Burke v. Southern Pacific R.R. Co., supra. Land grant lands were conveyed to the railroads by the government pursuant to these Acts, not as a gift or bounty, but as compensation and consideration for the railroads'

undertaking to build through the barren and unsettled West. Burke, supra.

The federally chartered railroads received the land grant lands from the federal government and held title to them as any private landowner. Santa Fe Pacific R.R. Co. v. Cord, 14 Ariz. App. 254, 261, 482 P.2d 503, 510, cert. denied, 404 U.S. 912 (1971). As part of their full fee ownership of the land grant lands, the federally chartered railroads had an unrestricted right to dispose of the land grant lands. Platt v. Union Pacific R.R. Co., supra; H.A. & L.D. Holland Co. v. Northern Pacific Ry., 214 F. 920, 923 (9th Cir. 1914). This right of disposition included the right to sell the lands and reserve a severed mineral estate. 1 American Law of Mining § 3.13 at 496 (1983).

Under the terms of the 1897 Act,

Santa Fe Pacific succeeded to the A&P's title to the land grant lands and its power to convey those lands. The purpose of the 1902 Act was not to authorize Santa Fe Pacific to transfer the land grant lands to AT&SF (since Santa Fe Pacific already had the power to transfer those lands to AT&SF or anyone else), but to authorize a transfer of the railroad and operating properties to AT&SF. Contrary to the Spurlocks' lengthy analysis, nothing in the 1902 Act (or any other Act of Congress) required Santa Fe Pacific to convey the land grant lands to AT&SF.

It was fully within the legal rights and corporate powers of Santa Fe Pacific to do what it did: convey the railroad to AT&SF and retain the land grant lands. It was equally proper for Santa Fe Pacific, more than forty years later, to convey some of the land grant

lands to the Spurlocks' predecessors subject to a reservation of "all oil, gas, coal and minerals whatsoever." See Russell v. Texas Co., supra at 641. The Spurlocks have no claim under federal law to the minerals in dispute in this litigation based on an assertion that title to the land grant lands was in AT&SF.

2. The Spurlocks' claim that the mineral reservation is ambiguous under the decisions of this Court was not raised below and is without merit.

The Spurlocks have never before argued that the term "minerals" must be found to be ambiguous under the decisions of this Court. The interpretation of the reservation clause was treated by the parties, and decided by the Arizona courts, as a question of state law.

Having failed to argue the existence of a federal question before the Arizona courts, the Spurlocks may not

assert it as a basis for certiorari. "It is a long-settled rule that the jurisdiction of this Court to re-examine the final judgment of a state court can arise only if the record as a whole shows either expressly or by clear implication that the federal claim was adequately presented in the state system." Webb v. Webb, 451 U.S. 493, 496-97 (1981) (emphasis added). See also New York ex rel. Bryant v. Zimmerman, 278 U.S. 63, 67 (1928); Oxley Stave Co. v. Butler County, 166 U.S. 648, 655 (1897).

Whether timely raised or not, there is, in reality, no federal question inherent in this case. The question of whether the language in a private deed is ambiguous is a question of state law. It is not the burden of this Court to rectify perceived inequities in the application of state law by state courts.

The Spurlocks cite four cases in

which, it is claimed, this Court found the term "minerals" to be per se ambiguous. In each case this Court performed its familiar role of interpreting an act of Congress which unquestionably governed the conveyance in issue, a different role altogether from serving as a final arbiter of state law issues.[3]

There is no case in which this Court has undertaken to establish a "federal rule" of construction of private

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[3] Thus, in Watt v. Western Nuclear, Inc., 462 U.S. 36 (1983), this Court construed the federal government's mineral reservation expressly mandated by the Stock-Raising Homestead Act of 1916. In Northern Pacific Ry. Co. v. Soderberg, 188 U.S. 526 (1903), this Court construed an 1864 act of Congress chartering the Northern Pacific Railroad Company. In Watt v. Alaska, 451 U.S. 259 (1981), this Court construed the language of the Wildlife Refuge Revenue Sharing Act of 1935 and the Mineral Leasing Act of 1920. In United States v. Northern Pacific Ry. Co., 311 U.S. 317 (1940), this Court construed language from the same act construed in Soderberg.

conveyances not governed by an act of Congress.

3. The Spurlocks' claim that their due process rights have been violated was not timely raised below and is without merit.

The Spurlocks argue that one of the members of the Arizona Court of Appeals was required to recuse himself and that his failure to do so violated their right to due process of law.

The Spurlocks did not raise that issue in the court of appeals or in their petition for review to the Arizona Supreme Court.[4] Only in their motions filed after their petition for review was denied and mandate issued did the Spurlocks attempt to raise any issue that their right to due

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[4] It is undisputed that the Spurlocks were aware of the asserted grounds for recusal prior to the consideration of this case by the court of appeals. Petition at 28.

process of law was abridged by Judge Haire's decision not to recuse himself.

The Spurlocks did not raise their due process claim in a timely fashion. In Herndon v. Georgia, 295 U.S. 441 (1935), the petitioners asked this Court to decide a federal question that was first raised in a motion for rehearing to the state supreme court. This Court stated that "[t]he long-established general rule is that the attempt to raise a federal question after judgment, upon a petition for rehearing, comes too late, unless the court actually entertains the question and decides it." Id. at 443. See also Hanson v. Denckla, 357 U.S. 235, 243-44 (1957); Radio Station WOW v. Johnson, 326 U.S. 120, 128 (1945); American Surety Co. v. Baldwin, 287 U.S. 156, 162-64 (1932).

In the instant case, the Arizona Supreme Court denied the Spurlocks leave

to file motions for reconsideration. In no way can the Arizona Supreme Court be said to have considered and decided the Spurlocks' claim of due process violations.

Even if the Spurlocks had timely raised their due process claim, granting certiorari would be inappropriate. Their argument is utterly devoid of merit.

The question posed by the Petition is whether the due process clause is violated when one member of a three-judge state appellate panel participates in a decision twenty-five years after he served as counsel for the receiver of a company that had done business with one of the parties to the litigation.[5] The answer is

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[5] Judge Haire concluded that he had no knowledge of significant evidentiary facts. Before making his decision not to recuse himself, he consulted with other court of appeals judges, including the chief judge. Appendix B at 35.

(footnote continued)

clearly no. As this Court has observed:

> All questions of judicial qualification may not involve constitutional validity. Thus matters of kinship, personal bias, state policy, remoteness of interest would generally be matters merely of legislative discretion.

Tumey v. State of Ohio, 273 U.S. 510, 523 (1927).

Not one of the cases cited by the Spurlocks suggests that due process is violated when a judge who arguably knows facts that may be of minimal evidentiary value sits as one of three judges on an

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(footnote continued from previous page)

Indeed, the Spurlocks in their letters to Judge Haire disavowed any concern that Judge Haire would be biased and expressly stated that the Spurlocks were not requesting recusal. "By writing this letter and calling certain matters to your attention, I am not suggesting that you would be biased for or against either party. . . ." Appendix C at 36. "The purpose of discussing the foregoing is not to encourage you to recuse yourself." Appendix D at 45.

appellate panel in a civil case. Recusal was fully considered by Judge Haire prior to oral argument in the court of appeals. He concluded correctly that there was no basis for recusal.

CONCLUSION

For the reasons stated above, the Court should deny the Petition for a Writ of Certiorari.

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SANTA FE PACIFIC RAILROAD COMPANY

Parent

Santa Fe Southern Pacific Corporation

Affiliates

Santa Fe Industries, Inc.
Advertising Direction, Inc.
Alameda Belt Line
The Atchison, Topeka and Santa Fe Railway Company
Central California Traction Company
The Clinton and Oklahoma Western Railroad Company
The Dodge City and Cimarron Valley Railway Company
Fresno Interurban Railway Company
The Garden City, Gulf and Northern Railroad Company
The Gulf and Inter-State Railway Company of Texas
Haystack Mountain Development Company
The Kansas Southwestern Railway Company
Los Angeles Junction Railway Company
The Oakland Terminal Railway
Oklahoma City Junction Railway Company
Rio Grande, El Paso and Santa Fe Railway Company
St. Joseph Terminal Railroad Company
Santa Fe Forwarding Company
Santa Fe Industrial Realty Company
Santa Fe Rail Equipment Company
Santa Fe Terminal Services, Inc.
Santa Fe Transportation Company
Star Lake Railroad Company
Sunset Railway Company
Transit Ice Company
Kirby Forest Industries, Inc.
Walker-Kurth Lumber Company
Limited Partnership Management, Inc.

Robert E. McKee, Inc.
B & C General Agency, Inc.
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Santa Fe Mining, Inc.
Gallo Wash Coal Company
Hospah Coal Company
Pintada Coal Company
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Santa Fe Land Improvement Company
Chula Vista Bayfront Investment Company
Santa Fe Towers Land Company
Santa Fe Natural Resources, Inc.
Santa Fe Energy Company
SF Energy Company of Colombia
SF Energy Company of Indonesia
SF Energy Company of Indonesia
(Banyu Block)
SF Energy Company of Indonesia
(Java Basin A)
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(Java Basin B)
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Santa Fe Energy Products Company
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Santa Fe Pipelines, Inc.
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Gulf Central Storage and Terminal Company
Gulf Central Storage and Terminal Company
of Nebraska
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Southwest Pipe Line Company
Standard Office Building Corporation
The Zia Company
Los Alamos Constructors, Inc.

SGSI Corporation
Southern Pacific Company
Bankers Leasing and Financial Corporation
Bankers Leasing Corporation
Asociados Internacionales del Pacifico
BLC Corporation
Commetro Leasing, Inc.
Commonwealth Control, Inc.
The Commonwealth Plan, Inc.
The Commonwealth Plan of Puerto Rico, Inc.
The Commonwealth System, Inc.
Financial Leasing Corporation
Lease Capital, Inc.
The Midwest Commonwealth Plan, Inc.
The Pacific Plan, Inc.
The Worcester Plan, Inc.
BLFC Securities Corporation
ComPlan, Inc.
Bravo Oil Company
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Southern Pacific Development Company
Canton Street Properties, Inc.
Golden Empire Investment Corporation
Southern Pacific Industrial Development Company
Southern Pacific Land Company
Geoproducts Corporation
Southern Pacific Pipe Lines, Inc.
Black Mesa Pipeline, Inc.
Mescalero Pipeline, Inc.
SPPLITT, Ltd.
Southern Pacific Transportation Company

Central California Traction Company
Evergreen Leasing Corporation
Holton Inter-Urban Railway Company
Los Angeles Union Terminal, Inc.
Northwestern Pacific Railroad Company
Petaluma and Santa Rosa Railroad Company
The Ogden Union Railway and Depot Company
Pacific Fruit Express Company
Pacific Motor Transport Company
Pacific Motor Trucking Company
Louis Heller, Incorporated
Portland Terminal Railroad Company
Portland Traction Company
Southern Pacific Air Freight, Inc.
Southern Pacific Equipment Company
Southern Pacific International, Inc.
Southern Pacific Marine Transport, Inc.
Southern Pacific Warehouse Company
St. Louis Southwestern Railway Company
The Alton & Southern Railway Company
Arkansas & Memphis Railway Bridge and Terminal Company
Dallas Terminal Railway and Union Depot Company
Glascar, Inc.
Kansas City Terminal Railway Company
Southern Illinois and Missouri Bridge Company
The Southwestern Town Lot Corporation
Terminal Railroad Association of St. Louis
Sunset Railway Company
Visalia Electric Railroad Company
Sunset Communications Company
Sunset Insurance Company
TOPS On-Line Services, Inc.

KERR McGEE CORPORATION

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Bikita Minerals Private Limited
Crescent Petroleum Company
Downtown Airpark, Inc.
Kerr-McGee Oil (U.K.) Limited
Little Medicine Development Company
San-Ann Service, Inc.
Sunningdale Oil (Ireland) Limited
Texoma Pipe Line Company
Transocean Drilling Company Limited
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Transocean Drilling (Curacao) N.V.
Transshore Drilling (Curacao) N.V.
Transshore Drilling Company Limited
Transworld Drilling Company (Nigiria) Limited
White Shoal Pipeline Corporation

Partnership

Brewster Phosphates